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Educational Ventures LLC,
a Delaware limited liability company,
erroneously sued as a California limited liability company

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Grapevine Education, LLC, an Arizona
limited liability company,

Plaintiff,

vs.

Educational Ventures, LLC, a California
limited liability company, dba ATA
College,

Defendant.

Case No.: 2:22-cv-00991-SMB

Honorable Susan M. Brnovich

**DEFENDANT EDUCATIONAL
VENTURES, LLC'S MOTION TO
DISMISS PLAINTIFF'S COMPLAINT
FOR LACK OF PERSONAL
JURISDICTION AND FOR FAILURE
TO STATE A CLAIM PURSUANT TO
RULE 12(b)(2) & (b)(6)**

*[Concurrently filed with the Declaration of
Herny Marentes in Support of Defendant's
Motion to Dismiss for Lack of Personal
Jurisdiction]*

Defendant Educational Ventures, LLC dba ATA College ("Defendant" or "ATA")
moves this Court under Federal Rules of Civil Procedure 12(b)(2) and (b)(6), for an Order
dismissing the Complaint of Plaintiff Grapevine Education, LLC ("Plaintiff") or to transfer
venue to the Southern District of California pursuant to 28 U.S.C. §§ 1404(a) and 1631.
The motion is made on the grounds that this Court lacks personal jurisdiction over ATA

1 and Grapevine has failed to state a claim under any of the causes of action alleged in the
2 Complaint.

3 In support of its Motion, Defendant submits and relies upon the following
4 Memorandum of Points and Authorities, the Declaration of Henry Marentes, Chief
5 Executive Officer of ATA, all other facts the Court may or should take notice of, all files,
6 records, and proceedings in this case, and any oral argument the Court may entertain.

7 **CERTIFICATION**

8 In accordance with LRCiv 12.1(c), ATA certifies that it met and conferred with
9 Grapevine by telephone on June 10, 2022, at 10:25 am and by e-mail on June 21, 2022.
10 Pursuant to the parties meet and confer, ATA inquired if Grapevine would amend its
11 Complaint to cure the deficiencies raised by ATA, but Grapevine has declined in whole.

12 DATED this 28th day of June, 2022.

13 **LAW OFFICE OF JAMES E. PILLEY, APC**

14
15 By: /s/ James E. Pilley
16 JAMES E. PILLEY
17 Attorney for Defendant
Educational Ventures LLC
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Grapevine brings the instant suit against ATA who operates a private vocational
4 school in El Cajon, California for allegedly failing to pay Grapevine for its performance of
5 various administrative and marketing services for ATA.

6 Grapevine's complaint ("Complaint," Docket No. 1-3, Exhibit "A") is fatally flawed
7 because ATA is not subject to the personal jurisdiction of this Court and the Complaint
8 fails to adequately allege a single cause of action against ATA.

9 First, ATA is not subject to the personal jurisdiction of this Court because (1) the
10 parties' alleged contract is insufficient to establish the minimum contacts required for
11 conferring personal jurisdiction; (2) ATA did not purposefully avail itself of the privilege
12 of conducting activities in Arizona; (3) the only connection between this case and Arizona
13 is that Arizona is where Grapevine is located, which falls short of the substantial connection
14 requirement; and (4) the exercise of jurisdiction over ATA violates Due Process.

15 Accordingly, for the reasons discussed herein, this Court should dismiss
16 Grapevine's Complaint against ATA or, in the alternative, transfer the instant action to the
17 Southern District of California where ATA is located and personal jurisdiction over each
18 party is proper.

19 In addition to this Court's lack of personal jurisdiction over ATA, the allegations in
20 Grapevine's Complaint are woefully deficient. Grapevine's breach of contract cause of
21 action fails to plead any of the material terms of the parties' alleged agreement including
22 whether the contract is oral or written. Grapevine's fraud cause of action fails to satisfy
23 Rule 9(b)'s specificity pleading requirement to properly plead fraud against a corporate
24 defendant. Grapevine's cause of action for unpaid wages fails as a matter of law because
25 Grapevine is not an employee as that term is defined under the relevant statute. Grapevine's
26 last cause of action for unjust enrichment also fails because Grapevine cannot convincingly
27 allege that it has no other remedy at law. As such, Grapevine fails to state claim upon which
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1 relief can be granted and this Court should act to dismiss its Complaint without leave to
2 amend.

3 **II. FACTS ALLEGED BY PLAINTIFF**

4 This case arises from an alleged February 2020 agreement between the parties. (*See*
5 Complaint at ¶¶7-8.) Grapevine claims that ATA reached out to Grapevine in Arizona and
6 sought Grapevine’s services to assist in ATA’s operations as an educational institution. (*Id.*
7 at ¶7.) Next, Grapevine avers that the parties’ discussions continued resulting in an
8 agreement being established in Arizona. (*Id.* at ¶8.) Grapevine does not include any
9 allegations about where these alleged discussions took place or by what method. The
10 Complaint is silent as to whether the agreement was oral or written, and Grapevine fails to
11 allege any of the material terms, like the scope, length, or amount of payment, nor does it
12 attach a copy of the alleged agreement to its Complaint.

13 Grapevine avers that Grapevine agreed to provide ATA with various administrative
14 and marketing services and later expanded to include oversight of most of ATA’s
15 operations. (Complaint at ¶8.) Grapevine further avers that ATA was aware that Grapevine
16 was an Arizona limited liability company and that Grapevine’s services, including the staff
17 that Grapevine would implement to assist Grapevine, would be provided from Grapevine’s
18 principal place of business, located within Maricopa County, Arizona. (*Id.* at ¶9.)
19 Grapevine claims it subsequently provided services to ATA but, at some point, ATA
20 stopped paying Grapevine for the services it provided resulting in a breach of the parties’
21 agreement. (*Id.* at ¶10-13.)

22 **III. FACTS DECLARED BY ATA’S CEO**

23 ATA operates a private vocational college in El Cajon, California. (Declaration of
24 Henry Marentes (“Marentes Decl.”), ¶5.)

25 ATA denies Grapevine’s contention that ATA reached out to Grapevine in Arizona.
26 (See Marentes Decl., ¶¶8-11.) ATA’s managers, members, and officers never reached out
27 to Grapevine Education, LLC seeking its services to assist ATA’s operations as an
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educational institution. (Marentes Decl., ¶9.) Instead, Grapevine Education, LLC's Chief Executive Officer, Dino Meyer, first propositioned ATA regarding its educational marketing services. (*Id.*)

On or around November 2, 2019, Mr. Meyer and his three associates traveled to El Cajon, California to meet with ATA's Chief Executive Officer, Henry Marentes, and visit ATA's campus. (*Id.* at ¶10.) Mr. Meyer initially made an offer to purchase ATA on behalf of a company that was not Grapevine Education, LLC, but ATA rejected the purchase offer. (*Id.* ¶¶10-11.)

After ATA rejected the purchase offer, on or about December 11, 2019, Mr. Meyer sent Mr. Marentes an e-mail pitching his company Chatdrive, a live chat service technology for educational marketing. (*Id.* at ¶11.) After further telephone and e-mail discussions between Mr. Marentes and Mr. Meyer about his experience in admissions and educational marketing, ATA extended Mr. Meyer a job offer to work in ATA's admissions department in El Cajon, California. (*Id.*) Mr. Meyer declined the job offer, instead offering his services as an outside admissions and marketing consultant. (*Id.*) Subsequently, Mr. Meyer formed Grapevine Education, LLC for tax purposes. (*Id.*)

As a small vocational college, ATA's marketing is directed at potential students in Southern California and does not directly market to potential students in Arizona. (*Id.* at ¶7.) ATA does not, and has never done, any business in Arizona. (*Id.* at ¶6.) ATA's managers, members, and officers have never travelled to Arizona to conduct business on behalf of ATA or negotiate contracts of any kind. (*Id.* at ¶8.)

IV. LEGAL STANDARD

A complaint should be dismissed when the Court lacks personal jurisdiction over the defendant. Fed. R. Civ. P. 12(b)(2). Where a defendant moves to dismiss a complaint for lack of personal jurisdiction, the plaintiff bears the burden of demonstrating that jurisdiction is appropriate. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004) (citing *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990)).

1 Either party may present sworn affidavits and declarations in addition to the
2 pleadings for the court’s consideration in determining whether it has personal jurisdiction
3 over the defendant. *See Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001) (court may
4 consider evidence presented in affidavits and declaration in determining personal
5 jurisdiction).

6 A complaint should also be dismissed when the plaintiff’s complaint fails to state a
7 claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). To survive a motion to
8 dismiss for failure to state a claim under Rule 12(b)(6), a complaint must plead “enough
9 facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550
10 U.S. 544, 570 (2007). A “plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement
11 to relief’ requires more than labels and conclusions, and a formulaic recitation of the
12 elements of a cause of action will not do.” *Id.* at 555; *Ashcroft v. Iqbal*, 556 U.S. 662, 678–
13 80 (2009). “[C]onclusory allegations of law and unwarranted inferences are insufficient to
14 defeat a motion to dismiss.” *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004).

15 **V. ARGUMENT**

16 **A. The Court Lacks Personal Jurisdiction Over ATA**

17 For the reasons stated herein, this Court lacks both general and specific jurisdiction
18 over ATA and the Complaint must be dismissed.

19 To exercise personal jurisdiction over a nonresident defendant, the Court must
20 determine whether the forum state has an applicable long-arm statute, and whether the
21 assertion of personal jurisdiction comports with the constitutional requirements of due
22 process. *Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986). Arizona's long-arm statute
23 “provides for personal jurisdiction co-extensive with the limits of federal due
24 process.” *Doe v. Am. Nat'l Red Cross*, 112 F.3d 1048, 1050 (9th Cir. 1997) (citing *Batton*
25 *v. Tenn. Farmers Mut. Ins. Co.*, 736 P.2d 2, 4 (Ariz. 1987)); *see also* Ariz. R. Civ. P. 4.2(a).
26 Due process requires defendants have “minimum contacts with the forum state, so that the
27 exercise of personal jurisdiction does not offend traditional notions of fair play and
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substantial justice.” *Am. Nat’l Red Cross*, 112 F.3d at 1050 (citing *Int’l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945)).

If a defendant’s activities in a state are “ ‘substantial’ or ‘continuous and systematic,’ general jurisdiction may be asserted even if the cause of action is unrelated to those activities.” *Haisten v. Grass Valley Med. Reimbursement Fund, Ltd.*, 784 F.2d 1392, 1396 (9th Cir. 1986) (internal citations omitted). Specific jurisdiction may be exercised if: (1) the defendant purposefully directs his activities to the forum or a resident thereof; or performs some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws; (2) the claim arises out of or relates to the defendant’s forum-related activities; and (3) the exercise of jurisdiction is reasonable. *Brayton Purcell LLP v. Recordon & Recordon*, 575 F.3d 981, 985 (9th Cir. 2009).

1. The Court Lacks General Jurisdiction Over ATA

The Supreme court has made clear that general jurisdiction exists only where a defendant is a citizen. *Bristol-Meyers Squibb Co. v. Superior Court of California, San Francisco Cty.*, 137 S. Ct. 1773, 1780 (2017) (“For an individual, the paradigm forum for the exercise of general jurisdiction is the individual’s domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home.”) (citing *Goodyear Dunlap Tires Operations S.A. v. Brown*, 564 U.S. 915, 924 (2011).) It is undisputed that ATA is not a citizen of Arizona. (Complaint ¶ 2; see also Marentes Decl., ¶¶4-5.) ATA is a Delaware limited liability company whose principal place of business is in El Cajon, California. (Marentes Decl., ¶4.). Therefore, this Court lacks general jurisdiction over ATA because ATA’s home state is California.

2. The Court Lacks Specific Jurisdiction Over ATA

Under the first prong of the specific jurisdiction test, Plaintiff must show that ATA “either (1) ‘purposefully availed’ [itself] of the privilege of conducting activities in the forum, or (2) ‘purposefully directed’ [its] activities toward the forum.” *Pebble Beach Co.*

1 v. *Caddy*, 453 F.3d 1151, 1155 (9th Cir. 2006)
2 (citing *Schwarzenegger*, 374 F.3d at 802). This prong presents two distinct standards, with
3 each to be applied under different circumstances. *Schwarzenegger*, 374 F.3d at 802; *see*
4 *Ziegler v. Indian River County*, 64 F.3d 470, 473 (9th Cir. 1995) (explaining that courts
5 apply the first prong differently to contract cases versus tort cases). In this Circuit, “[a]
6 purposeful availment analysis is most often used in suits sounding in contract,”
7 *Schwarzenegger*, 374 F.3d at 802. The instant suit sounds in contract so the purposeful
8 availment analysis is the proper analysis to determine this Court’s specific jurisdiction over
9 ATA.

10 a. ATA’s Actions Were Not Purposefully Directed At Arizona

11 “The purposeful availment analysis in breach of contract cases requires a
12 ‘qualitative evaluation of the defendant’s contact with the forum state.’ *SKAPA Holdings*
13 *LLC v. Seitz*, No. CV-20-00611-PHX-DJH, 2021 WL 672091, at *4 (D. Ariz. Jan. 21,
14 2021), *aff’d*, No. 21-15298, 2022 WL 94716 (9th Cir. Jan. 10, 2022) (citing *Harris Rutsky*
15 *& Co. Ins. Servs. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1130 (9th Cir. 2003)). “‘As the
16 Supreme Court has expressly cautioned, a contract alone does not automatically establish
17 minimum contacts in the plaintiff’s home forum.’” *Id.* (citing *Boschetto v. Hansing*, 539
18 F.3d 1011, 1017 (9th Cir. 2008)). “‘Rather, there must be ‘actions by the defendant himself
19 that create a ‘substantial connection’ with the forum State.’” *Id.* (citing *Picot v. Weston*,
20 780 F.3d 1206, 1212 (9th Cir. 2015) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S.
21 462, 475 (1985)). “‘In determining whether such contacts exist, courts are to consider ‘prior
22 negotiations and contemplated future consequences, along with the terms of the contract
23 and the parties’ actual course of dealing.’” *Id.* (citing *Burger King*, 471 U.S. at 479.).
24 “‘Merely random, fortuitous, or attenuated contacts are not sufficient.’” *Id.* (citing
25 *Burger King*, 471 U.S. at 479 (internal quotation marks omitted)).

26 Here, Grapevine alleges that Defendant reached out to Plaintiff in Arizona and
27 sought Plaintiff’s services to assist Defendant’s operations as an educational institution.
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1 (Complaint at ¶7.) Plaintiff further avers that “[d]iscussions continued regarding Plaintiff
2 providing Defendant with services, which resulted in an agreement being established in
3 Arizona wherein Plaintiff would provide Defendant with various administrative and
4 marketing services. . .” (*Id.* at ¶8.) Performance of the contract is not linked to Arizona
5 because the various administrative and marketing services that Grapevine alleges to have
6 performed were for the benefit of ATA’s California college. (*See* Marentes Decl., ¶¶7, 11.)
7 Any benefits from the parties alleged agreement and the future consequence are in relation
8 to the promotion of enrollments in a California vocational college. California, not Arizona,
9 has a substantial connection to the parties alleged agreement. Plaintiff has not and cannot
10 allege that ATA conducted any activities within Arizona beyond the alleged formation of
11 a contract with an entity that happens to be located in Arizona. ATA’s principals never
12 travelled to Arizona for negotiations or to further the goals of any purported agreement.
13 (*See* Marentes Decl., ¶¶8-9.) Grapevine does not allege that a written contract designates
14 Arizona as the choice of law or the forum for disputes, nor could it because such an
15 agreement does not exist. ATA has no purposeful connection to Arizona other than the
16 random and attenuated circumstances that Grapevine is an Arizona company. ATA’s
17 relationship with an Arizona company was not by design. The fact that Grapevine is an
18 Arizona company does not allow it to better provide the alleged services to ATA.

19 ATA must have sufficient contacts with Arizona itself, not just Grapevine. *See*
20 *Morrill v. Scott Financial Corp.*, 973 F.3d 1136 (9th Cir. 2017). The contract alone cannot
21 automatically establish minimum contact in Arizona. ATA’s conduct and connection with
22 Arizona are not such that it should reasonably anticipate being haled into court there. *See*
23 *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

24 The Complaint does not plead that ATA engaged in any other substantial
25 transactions or activities in Arizona, nor does it establish any other activities to suggest a
26 substantial connection between ATA and Arizona. Nor can it in good faith, making any
27 amendment to cure this deficiency futile. (*See* Marentes Declaration, generally.) Therefore,
28

1 this Court lacks specific personal jurisdiction over ATA because ATA has not purposefully
2 availed itself of the privilege of conducting activities in Arizona.

3 b. ATA Does Not Have Forum-Related Activities In Arizona

4 The Ninth Circuit applies a “but for” test when determining whether a plaintiff’s
5 claims arises out of a defendant’s forum related activities. *Brink v. First Credit Resources*,
6 57 F.Supp.2d 848, 861 (D.Ariz. 1999) (citations omitted). “The ‘arising out of’ requirement
7 of the specific jurisdiction test is met if, ‘but for’ the contacts between the defendant and
8 the forum state, the cause of action would not have arisen.” *Id.*, citing *Terracom v. Valley*
9 *Natl. Bank*, 49 F.3d 555 (9th Cir.1995). Here, the but for test is not met because
10 Grapevine’s claims arise from ATA’s purported non-payment of sums owed to Grapevine
11 for Grapevine’s marketing and operation of ATA’s California college.¹ (*See* Complaint at
12 ¶¶8, 12.) There is not a clear relationship between ATA entering into an agreement with
13 Grapevine in Arizona and its alleged failure to pay Grapevine’s invoices. ATA’s alleged
14 failure to pay Grapevine for its services has nothing to do with Grapevine being an Arizona
15 company or performing the services in Arizona. Therefore, Grapevine’s claims do not arise
16 out of forum-related activities and Grapevine’s Complaint should be dismissed because
17 this Court lacks specific personal jurisdiction over ATA.

18 c. Exercising Jurisdiction Over ATA Is Not Reasonable

19 The Ninth Circuit considers the following seven factors to determine whether
20 specific personal jurisdiction over a defendant is reasonable:

- 21 1) the extent of the defendant’s purposeful interjection into the forum
22 state’s affairs; 2) the burden on the defendant; 3) conflicts of law
23 between the forum and defendant’s home jurisdiction; 4) the forum’s
24 interest in adjudicating the dispute; 5) the most efficient judicial
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26
27 ¹ The “but for” statement is *non sequitur*: but for ATA contracting with Grapevine, an
28 Arizona limited liability company, ATA would have paid Grapevine for its services.

1 resolution of the dispute; 6) the plaintiff's interest in convenient and
2 effective relief; and 7) the existence of an alternative forum.

3 No one factor is dispositive, rather the court balances all seven. *Mattel, Inc. v.*
4 *Greiner and Hausser GmbH*, 354 F.3d 857, 867 (9th Cir. 2003)
5 (citing *Harris Rutsky & Co. Ins. Services, Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122,
6 1132 (9th Cir. 2003)). The weaker the plaintiff's showing of purposeful availment and
7 relatedness to forum-related acts, the less a defendant need show in terms of
8 unreasonableness to defeat jurisdiction; and vice versa. *Ticketmaster-New York, Inc. v.*
9 *Alioto*, 26 F.3d 201, 210 (1st Cir. 1994).

10 Here, conferring jurisdiction over ATA is unreasonable. As discussed above, ATA's
11 purposeful interjection into Arizona is feeble at best. ATA had no reason to anticipate that
12 its contacts with Grapevine would lead to it being haled into court in Arizona. (*Id.* at ¶¶6-
13 9, 12.) Thus, the burden on ATA, a small business, is great due to the increased expense of
14 litigating outside of its home state of California. (Marentes Decl., ¶13.) The conflicts of
15 law between the forum and Arizona and California are not substantial but the weight of the
16 other factors tip in the direction of ATA. Arizona's interest in adjudicating the action
17 should be minimal because as discussed above, the benefits from the parties alleged
18 agreement are to promote enrollment in a California vocational college. It is California, not
19 Arizona, has a substantial connection to the parties alleged agreement. Accordingly, the
20 most efficient judicial resolution of the dispute is in the Southern District of California, the
21 District where Defendant is located. Similarly, the Southern District of California is a
22 suitable and adequate forum to resolve the parties' dispute. Grapevine's interest in effective
23 relief is in no way diminished by litigating in the Southern District of California. Therefore,
24 when balancing all seven factors, in light of the lack of ATA's purposeful availment in
25 Arizona, it is unreasonable for this Court to exercise personal jurisdiction of ATA and
26 Grapevine's Complaint should be dismissed.

1 Alternatively, if this Court does not want to dismiss Grapevine’s action, it should
2 transfer this action to the Southern District of California pursuant to 28 U.S.C. §§ 1404(a)
3 and 1631.

4 **B. The Complaint Fails To State Any Claim Against Defendant**

5 **1. Plaintiff’s Fraud Claim Is Not Stated with Particularity**

6 A showing of fraud requires (1) a representation; (2) its falsity; (3) its materiality;
7 (4) the speaker’s knowledge of its falsity or ignorance of its truth; (5) the speaker’s intent
8 that it be acted upon by the recipient in the manner reasonably contemplated; (6) the
9 hearer’s ignorance of its falsity; (7) the hearer’s reliance on its truth; (8) the right to rely on
10 it; (9) his consequent and proximate injury. *Nielson v. Flashberg*, 101 Ariz. 335, 339
11 (1966).

12 Rule 9(b) of the Federal Rules of Civil Procedure imposes a heightened pleading
13 requirement for claims of fraud. Specifically, Rule 9(b) requires a plaintiff to “state with
14 particularity the circumstances constituting fraud or mistake.” Fed. R. Civ. P. 9(b). A party
15 must set forth “the time, place, and specific content of the false representation as well as
16 the identities of the parties to the misrepresentation.” *Odom v. Microsoft Corp.*, 486 F.3d
17 541, 553 (9th Cir. 2007)(citation omitted).

18 Here, Grapevine’s Complaint alleges that “[i]n entering into the Agreement,
19 Defendant represented to Plaintiff that it would act in good faith and use its best efforts to
20 timely perform under the Agreement, including paying Plaintiff all sums due for Plaintiff’s
21 Services. . . .” (Complaint at ¶16.) Grapevine further alleges that “Defendant knew that
22 such Representations were false as Defendant, upon information and belief, intended to
23 pay Plaintiff whatever it wanted and whenever it wanted.” (*Id.* at ¶17.) Grapevine avers
24 that “Defendant intended that Plaintiff rely on the Representation, which Plaintiff
25 reasonably did” and as a direct and proximate result Grapevine sustained damages. (*Id.* at
26 ¶18-19.)

1 At the outset, Grapevine's fraud cause of action is highly implausible on its face.
2 The thrust of Grapevine's allegations illustrate a breach of contract resulting from an
3 alleged failure to pay sums due. "A breach of contract is not fraud." *Trollope v. Koerner*,
4 106 Ariz. 10, 19 (1970).

5 Nevertheless, Grapevine's allegations do not meet requirements for pleading fraud
6 against a corporate defendant or the heightened pleading standards of Rule 9(b).
7 Grapevine's complaint does not specifically identify the name of the person at ATA that
8 made the allegedly fraudulent representation, their authority to speak, or if the
9 misrepresentation was spoken or written. Grapevine also does not provide specifics on
10 where the representation was made, only that it was made "[i]n entering into the
11 Agreement." (See Complaint at ¶16.) Moreover, Grapevine's allegations regarding ATA's
12 knowledge of the falsity, ATA's intent, Grapevine's reliance on the fraudulent
13 representation, and Grapevine's consequent and proximate injury are all just formulaic
14 recitations of the elements of a cause of action for fraud. Grapevine does not plead facts
15 sufficient to show the who, what, when, where, and how ATA made the alleged
16 misrepresentation sufficient to meet the high standards of a fraud cause of action. *See Vess*
17 *v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003). Therefore, Grapevine's
18 fraud cause of action fails as a matter of law and must be dismissed with prejudice.

19 **2. Plaintiff's Breach Of Contract Claim Fails To Satisfy Notice-Pleading**
20 **Standards**

21 To state a cause of action for breach of contract, Grapevine must plead facts alleging
22 "(1) a contract exists between the plaintiff and defendant; (2) the defendant breached the
23 contract; and (3) the breach resulted in damage to plaintiff." *Hannibal-Fisher v. Grand*
24 *Canyon Univ.*, 523 F. Supp. 3d 1087, 1093 (D. Ariz. 2021)(citing *Dylan Consulting Servs.*
25 *LLC v. SingleCare Servs. LLC*, No. CV-16-02984-PHX-GMS, 2018 WL 1510440, at *2
26 (D. Ariz. Mar. 27, 2018)).
27
28

1 Here, Grapevine does not sufficiently alleged that a valid contract exist between the
2 plaintiff and defendant. Grapevine fails to attach a copy of the contract to its Complaint.
3 Grapevine also fails to allege whether the contract between the parties was written or oral.
4 Grapevine simply alleges that “Defendant initially paid Plaintiff’s invoices, but thereafter
5 discontinued remitting payments for the Services that Plaintiff provided to Defendant.”
6 (Complaint at ¶ 11.) Grapevine does not attach any of the unpaid invoices that it allegedly
7 sent ATA nor does it allege the amount of the alleged invoices. Grapevine further fails to
8 allege rate or amount that ATA agreed to pay Grapevine for its services. Grapevine has
9 failed to allege the substance of many of the relevant terms of the alleged contract leaving
10 ATA and this Court to guess about the nature and substance of the alleged contract.
11 Grapevine has failed to meet the notice-pleading standards of Rule 8 of the Federal Rules
12 of Civil Procedure and its breach of contract claim must be dismissed.

13 **3. Plaintiff’s Wage Claim Fails Because Grapevine Is Not ATA’s**
14 **Employee**

15 Under the Arizona Wage Statute, “if an employer ... fails to pay wages due any
16 employee, the employee may recover in a civil action against an employer or former
17 employer an amount that is treble the amount of the unpaid wages.” A.R.S. § 23-
18 355(A). In this context, “employee” refers to “any *person* who performs services for an
19 employer under a contract of employment either made in this state or to be performed
20 wholly or partly within this state.” A.R.S. § 23-350(2), emphasis added.

21 Here, Grapevine’s wage claim under the Arizona Wage Statute fails as a matter of
22 law because Grapevine is not a person but an Arizona limited liability company. Under
23 A.R.S. § 23-350, the definition of employee requires that the employee be a “person” who
24 performs services for an employer. A.R.S. § 23-350(2). An Arizona limited liability
25 company is not a person but a corporate entity for purposes of the Arizona Wage Statute.

26 Notably, A.R.S. § 23-350 defines “Employer” as “any individual, partnership,
27 association, joint stock company, trust or corporation, the administrator or executor of the
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1 estate of a deceased individual or the receiver, trustee or successor of any such person
2 employing *any person*.” A.R.S. § 23-350(3), emphasis added. The legislature broad
3 definition for an employer and limited definition of person further indicates that the
4 legislature did not intend for corporate entities such as Grapevine to be included in the
5 definition of employee for the purposes of the Arizona Wage Statute. Because Grapevine
6 is not an employee of ATA, its unpaid wage claim fails as a matter of law. Accordingly,
7 the problem with this claim is incurable and should be dismissed with prejudice.

8 **4. Plaintiff’s Unjust Enrichment Claim Fails Because It Alleges An**
9 **Adequate Remedy at Law**

10 A claim of unjust enrichment under Arizona law has five elements: “(1) an
11 enrichment, (2) an impoverishment, (3) a connection between the enrichment and
12 impoverishment, (4) the absence of justification for the enrichment and impoverishment,
13 and (5) the absence of a remedy provided by law.” *Freeman v. Sorchych*, 226 Ariz. 242,
14 251 (2011) (citing *City of Sierra Vista v. Cochise Enters., Inc.*, 144 Ariz. 375, 381–82
15 (1984)).

16 A claim for equitable relief is proper only where a plaintiff lacks an adequate legal
17 remedy. *Franklin v. Gwinnett Cnty. Pub. Sch.*, 503 U.S. 60, 75–76 (1992). Here,
18 Grapevine pleads that a legal remedy - - monetary damages - - is available if it prevails.
19 (Complaint at ¶ 14.) Grapevine has not pleaded facts suggesting the contract may be
20 unenforceable or invalid. Consequently, this requires dismissal of Grapevine’s claim for
21 unjust enrichment. *Rhynes v. Stryker Corp.*, No. 10-5619 SC, 2011 WL 2149095, at *4
22 (N.D. Cal. May 31, 2011) (rejecting argument that plaintiffs would have “no adequate
23 remedy at law if their other claims fail” because “equitable relief is unavailable” where
24 the claims pleaded may entitle them to a legal remedy).

25 Further, because Plaintiff’s “legal and equitable claims [are] based on the same
26 factual predicates,” the problem with its equitable claim is incurable, and the claims should
27 be dismissed with prejudice. *Loo v. Toyota Motor Sales, USA, Inc.*, No. 8:19-cv-00750-
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1 VAP(ADSx), 2019 WL 7753448, at *13–14 (C.D. Cal. Dec. 20, 2019)
2 ; *Gardiner v. Walmart Inc.*, No. 20-cv-04618-JSW, 2021 WL 2520103, at *7 (N.D. Cal.
3 Mar. 5, 2021); *In re Macbook Keyboard Litig.*, No. 5:18-cv-02813-EJD, 2020 WL
4 6047253, at *3–4 (N.D. Cal. Oct. 13, 2020).

5 **VI. CONCLUSION**

6 For the foregoing reasons, ATA respectfully requests that this Court grant its instant
7 motion to dismiss Grapevine’s Complaint because this Court lacks personal jurisdiction
8 over ATA and the Complaint fails to state any claim upon which relief can be granted.
9 However, if this Court is not persuaded that the Complaint should be dismissed, ATA
10 respectfully requests that this Court transfer the instant action to the Southern District of
11 California pursuant to 28 U.S.C. §§ 1404(a) and 1631.

12
13 DATED this 28th day of June, 2022.

14
15 **LAW OFFICE OF JAMES E. PILLEY, APC**

16
17 By: /s/ James E. Pilley
18 JAMES E. PILLEY
19 Attorney for Defendant
Educational Ventures LLC